

EXHIBIT E ADDITIONAL PROVISIONS

SECTION 1 – GENERAL AUTHORITY

This contract is entered into in accordance with the provisions of Part 2.5 (commencing with Section 5775) of Division 5 of the Welfare and Institutions (W&I) Code.

Part 2.5 (commencing with Section 5775) of Division 5 of the W&I Code directs the State Department of Mental Health to implement and administer Managed Mental Health Care for Medi-Cal eligible residents of this state; and _____ desires to operate the Mental Health Plan for _____ County.

SECTION 2 – DEFINITIONS

Unless otherwise expressly provided or the context otherwise requires, the following definitions of terms shall govern the construction of this contract:

- A. "Beneficiary" means any Medi-Cal beneficiary whose county of responsibility on the Medi-Cal Eligibility Data System (MEDS) or as determined pursuant to Title 9, California Code of Regulations (CCR), Section 1850.405, corresponds with the county covered by this contract.
- B. "Contractor" means _____.
- C. "Covered Services" means specialty mental health services as defined in Title 9, CCR, Section 1810.247, to the extent described in Title 9, CCR, Section 1810.345, except that psychiatric nursing facility services are not included.
- D. "Department" means the State Department of Mental Health.
- E. "DHS" means the State Department of Health Services.
- ~~E~~ F. "Director" means the Director of the State Department of Mental Health.
- ~~F~~ G. "HHS" means the United States Department of Health and Human Services.
- ~~G~~ H. "Emergency Psychiatric Condition" means that a beneficiary has a condition that meets admission reimbursement criteria for medical necessity according to Title 9, CCR, Section 1820.205, and due to a mental disorder, is:
 - 1. A danger to self or others, or

2. Immediately unable to provide for or utilize food, shelter or clothing.

H I. "Facility" means any premises:

1. Owned, leased, used or operated directly or indirectly by or for the Contractor or its affiliates for purposes related to this contract, or
2. Maintained by a provider to provide covered services on behalf of the Contractor.

I J. "Individual provider" means a provider as defined in Title 9, CCR, Section 1810.222.

J K. "Group provider" means a provider as defined in Title 9, CCR, Section 1810.218.2.

K L. "Medi-Cal managed care plan" means an entity contracting with the State Department of Health Services to provide services to enrolled beneficiaries under Chapter 7, commencing with Section 14000, or Chapter 8, commencing with Section 14200, of Division 9, Part 3 of the W&I Code.

L M. "Organizational provider" means a provider as defined in Title 9, CCR, Section 1810.231.

M N. "Post-stabilization care services" means covered services, related to an emergency medical condition, that are provided after a beneficiary is stabilized in order to maintain the stabilized condition, or, under the circumstances described in Exhibit A, Attachment 2, Section E, to improve or resolve the enrollee's condition. Post-stabilization care services include psychiatric consults in an emergency room following the initial evaluation to be post-stabilization services, if the consult does not result in a determination that the beneficiary must be admitted for emergency psychiatric inpatient hospital services. Post-stabilization services also include medically necessary acute psychiatric inpatient hospital services after the emergency psychiatric condition has been resolved.

N O. "Psychiatric nursing facility services" means services as defined in Title 9, CCR, Section 1810.239.

O P. "Public school site" means a location on the grounds of a public school at which a provider delivers specialty mental health services to beneficiaries.

P Q. "Satellite site" means a site owned, leased or operated by an organizational provider at which specialty mental health services are delivered to beneficiaries less than 20 hours per week, or, if located at a multiagency site, at which specialty mental health services are delivered by no more than two employees or contractors of the provider.

Q R. "Subcontract" means an agreement entered into by the Contractor with any of the following:

1. A provider of specialty mental health services who agrees to furnish covered services to beneficiaries.
2. Any other organization or person who agrees to perform any administrative function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to the Department under the terms of this contract.

R S. "Urgent condition" means a situation experienced by a beneficiary that without timely intervention is likely to result in an immediate emergency psychiatric condition.

SECTION 3 – GENERAL PROVISIONS

A. Governing Authorities

This contract shall be governed by and construed in accordance with:

Part 2.5 (commencing with Section 5775), Chapter 4, Division 5, W&I Code;

Article 5 (Sections 14680- 14685), Chapter 8.8, Division 9, W&I Code;

Title 9, CCR, Division 1, Chapter 11 (commencing with Section 1810.100);

Title 42, Code of Federal Regulations (CFR);

Title 45, CFR, Parts 160 and 164, Subparts A and E, to the extent that these requirements are applicable;

Title 42, United States Code;

Title VI of the Civil Rights Act of 1964;

Title IX of the Education Amendments of 1972;

Age Discrimination Act of 1975;

Rehabilitation Act of 1973;

Titles II and III of the Americans with Disabilities Act;

All other applicable laws and regulations; and

The terms and conditions of any Interagency Agreement between the Department of Mental Health and the State Department of Health Services related to the provision of mental health services to beneficiaries by the Contractor.

Any provision of this contract that is subsequently determined to be in conflict with the above laws, regulations, and agreements is hereby amended to conform to the provisions of those laws, regulations and agreements. Such amendment of the contract shall be effective on the effective date of the statutes, regulations or agreements necessitating it, and shall be binding on the parties hereto even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties. Such amendment shall constitute grounds for termination of this contract, in accordance with the provisions of Section 4 and Title 9, CCR, Section 1810.325(d), if the Contractor determines it is unable or unwilling to comply with the provisions of such amendment. If the Contractor gives notice of termination to the Department, the parties shall not be bound by the terms of such amendment, commencing from the time notice of termination is received by the Department until the effective date of termination.

The full text of state regulations that are cited by section number in this contract is included as Exhibit E, Attachment 1. The full text of federal regulations that are cited by section number in this contract is included as Exhibit E, Attachment 2.

SECTION 4 – TERM AND TERMINATION

A. Contract Renewal

This contract may be renewed unless good cause is shown for nonrenewal pursuant to Title 9, CCR, Section 1810.320. Renewal shall be on an annual basis.

B. Contract Termination

The Department or the Contractor may terminate this contract in accordance with Title 9, CCR, Section 1810.325.

C. Mandatory Termination

The Department shall immediately terminate this contract in the event that the Director determines that there is an immediate threat to the health and safety of beneficiaries. The department shall terminate this contract in the event that the Secretary, HHS, determines that the contract does not meet the requirements for participation in the Medicaid program, Title XIX of the Social Security Act. Terminations under this section shall be in accordance with Title 9, CCR, Section 1810.325.

D. Termination of Obligations

All obligations to provide covered services under this contract shall automatically terminate on the effective date of any termination of this contract. The Contractor shall be responsible for providing covered services to beneficiaries until the termination or expiration of the contract and shall remain liable for the processing and payment of invoices and statements for covered services provided to beneficiaries prior to such expiration or termination.

SECTION 5 - HIPAA BUSINESS ASSOCIATE AGREEMENT

The Contractor, referred to in this section as Business Associate, shall comply with, and assist the Department in complying with, the privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Title 42, United States Code, Section 1320d et seq. and its implementing regulations (including but not limited to Title 45, CFR, Parts 142, 160, 162, and 164), hereinafter collectively referred to as the "Privacy Rule." Terms used but not otherwise defined in this section shall have the same meaning as those terms are used in the Privacy Rule.

If the Department becomes aware of a pattern of activity that violates this section and reasonable steps to cure the violation are unsuccessful, the Department shall terminate the contract, or if not feasible; report the problem to the Secretary of HHS.

A. Use and Disclosure of Protected Health Information

1. Except as otherwise provided in this section, Business Associate may use or disclose protected health information (PHI) to perform functions, activities or services for or on behalf of the Department, as specified in this contract, provided that such use or disclosure would not violate the Privacy Rule if done by the Department or the minimum necessary policies and procedures of the Department.
2. Except as otherwise limited in this section, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
3. Except as otherwise limited in this section, Business Associate may use PHI to provide data aggregation services related to the health care operation of the Department.

B. Further Disclosure of PHI

Business Associate shall not use or further disclose PHI other than as permitted or required by this section or as required by law.

C. Safeguard of PHI

Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this section.

D. Unauthorized Use or Disclosure of PHI

Business Associate shall report to the Department any use or disclosure of the PHI not provided for by this section.

E. Mitigation of Disallowed Uses and Disclosures

Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this section.

F. Agents and Subcontractors of the Business Associate

Business Associate shall ensure that any agent, including a subcontractor, to which the Business Associate provides PHI received from, or created or received by the Business Associate on behalf of the Department, shall comply with the same restrictions and conditions that apply through this section to the Business Associate with respect to such information.

G. Access to PHI

Business Associate shall provide access, at the request of the Department, and in the time and manner designated by the Department, to the Department or, as directed by the Department, to PHI in a designated record set to an individual in order to meet the requirements of Title 45, CFR, Section 164.524.

H. Amendment(s) to PHI

Business Associate shall make any amendment(s) to PHI in a designated record set that the Department directs or at the request of the Department or an individual, and in the time and manner designated by the Department in accordance with Title 45, CFR, Section 164.526.

I. Documentation of Uses and Disclosures

Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

J. Accounting of Disclosure

Business Associate shall provide to the Department or an individual, in time and manner designated by the Department, information collected in accordance with Title 45, CFR, Section 164.528, to permit the Department to respond to a request by the individual for an accounting of disclosures of PHI in accordance with Title 45, CFR, Section 164.528.

K. Records Available to the Department and Secretary of HHS

Business Associate shall make internal practices, books and records related to the use, disclosure, and privacy protection of PHI received from the Department, or created or received by the Business Associate on behalf of the Department, available to the Department or to the Secretary of HHS for purposes of the Secretary determining the Department's compliance with the Privacy Rule, in a time and manner designed by the Department or the Secretary of HHS.

L. Retention, Transfer and Destruction of Information on Contract Termination

1. Upon termination of the contract for any reason, Business Associate shall retain all PHI received from the Department, or created or received by the Business Associate on behalf of the Department in accordance with Exhibit A, Attachment 1, Section P of this contract in a manner that complies with the Privacy Rules. This provision shall apply to PHI in possession of subcontractors or agents of the Business Associate.
2. Prior to termination of the contract, the Business Associate may be required by the Department to provide copies of PHI to the Department in accordance with Exhibit A, Attachment 1, Section Q. This provision shall apply to PHI in possession of subcontractors or agents of the Business Associate.
3. When the retention requirements on termination of the contract have been met, the Business Associate shall destroy all PHI received from the Department, or created or received by the Business Associate on behalf of the Department. This provision shall apply to PHI in possession of subcontractors or agents of the Business Associate. Business Associate, its agents or subcontractors shall retain no copies of the PHI.

4. In the event that Business Associate determines that destroying the PHI is not feasible, Business Associate shall provide the Department notification of the conditions that make destruction infeasible. Upon mutual agreement of the parties that the destruction of the PHI is not feasible, Business Associate shall extend the protections of this section to such PHI and limit further use and disclosures of such PHI for so long as Business Associate, or any of its agents or subcontractors, maintains such PHI.

M. Amendments to Section

The Parties agree to take such action as is necessary to amend this section as necessary for the Department to comply with the requirements of the Privacy Rule and its implementing regulations.

N. Material Breach

If the Department becomes aware of a pattern of activity that violates this section and reasonable steps to cure the violation are unsuccessful, the Department shall terminate the contract, or if not feasible; report the problem to the Secretary of HHS.

O. Survival

The respective rights and obligations of Business Associate shall survive the termination of this contract.

P Interpretation

Any ambiguity in this section shall be resolved to permit the Department to comply with the Privacy Rule.

SECTION 6– DUTIES OF THE STATE

In discharging its obligations under this contract, the State shall perform the following duties:

A. Payment for Services

Pay the appropriate payments set forth in Exhibit B.

B. Reviews

Conduct reviews of access and quality of care at least once every three years and issue reports to the Contractor detailing findings, recommendations, and corrective action, as appropriate, under Title 9, CCR, Sections 1810.380 and 1810.385.

Arrange for an annual external quality review of the Contractor as required by Title 42, CFR, Section 438,204(d).

C. Monitoring for Compliance

Monitor the operation of the Contractor for compliance with the provisions of this contract, and applicable federal and state law and regulations. Such monitoring activities will include, but not be limited to, inspection and auditing of Contractor facilities, management systems and procedures, and books and records as the Department deems appropriate, at any time during the Contractor's or facility's normal business hours. When monitoring activities identify areas of non-compliance, issue reports to the Contractor detailing findings, recommendations, and corrective action, as appropriate, under Title 9, CCR, Sections 1810.380 and 1810.385.

D. Approval Process

1. In the event that the Contractor requests changes to its Implementation Plan, the Department shall provide a Notice of Approval or Notice of Disapproval including the reasons for the disapproval, to the Contractor within 30 calendar days after the receipt of the request from the Contractor. The Contractor may implement the proposed changes 30 calendar days from submission to the Department, if the Department fails to provide a Notice of Approval or Disapproval.
2. The Department shall act promptly to review the Contractor's Cultural Competence Plan submitted pursuant to Exhibit A, Attachment 1, Item K. The Department shall provide a Notice of Approval or a Notice of Disapproval including the reasons for the disapproval, to the Contractor within 60 calendar days after the receipt of the plan from the Contractor. The Contractor may implement the plan 60 calendar days from submission to the Department if the Department fails to provide a Notice of Approval or Disapproval.
3. The Department shall act promptly to review requests from the Contractor for approval of subcontracts with providers that meet the conditions described in Title 9, CCR, Section 1810.438. The Department shall act to approve or disapprove the reimbursement and related claiming and cost reporting issues included in the subcontract within 60 days of receipt of a request from the Contractor. If the Department disapproves the request, the Department shall provide the Contractor with the reasons for disapproval.

E. Certification of Organizational Provider Sites Owned or Operated by the Contractor

The Department shall certify the organizational provider sites that are owned, leased or operated by the Contractor, in accordance with Title 9, CCR, Section 1810.435 and the requirements specified in Exhibit A, Attachment 1, Appendix D. This certification shall be prior to the date on which the Contractor begins to deliver

services under this contract at these sites and once every three years after that date, unless the Department determines an earlier date is necessary. The on-site review required by Title 9, CCR, Section 1810.435(e), shall be made of any site owned, leased, or operated by the Contractor and used for to deliver covered services to beneficiaries, except that on-site review is not required for public school or satellite sites.

The Department may allow the Contractor to begin delivering covered services to beneficiaries at a site subject to on-site review by the Department prior to the date of the on-site review, provided the site is operational and has any required fire clearances. The earliest date the Contractor may begin delivering covered services at a site subject to on site review by the Department is latest of the date the Contractor requested certification of the site in accordance with procedures established by the Department, the date the site was operational, or the date a required fire clearance was obtained.

The Department may allow the Contractor to continue delivering covered services to beneficiaries at a site subject to on-site review by the Department as part of the recertification process prior to the date of the on-site review, provided the site is operational and has any required fire clearances.

Nothing in this section precludes the Department from establishing procedures for issuance of separate provider identification numbers for each of the organizational provider sites operated by the Contractor to facilitate the claiming of federal financial participation by the Contractor and the Department's tracking of that information.

F. Development and Distribution of Informing Materials

- a. Annually review the Contractor's beneficiary brochure and provider list for changes in federal and state laws and rules and changes to Contractor-specific information. If changes are required, develop the revised brochure and provider list and provide to the Contractor. The beneficiary brochure and provider list shall
~~Develop a beneficiary brochure and provider list for the Contractor that~~ include the information required by Title 42, CFR, Section 438.10(f) and (g), including information specific to Contractor provided pursuant to Exhibit A, Attachment 1, Section V. The informing materials shall meet the language and format standards required by Title 42, CFR, Section 438.10(c) and (d).
 - 1) In addition to any requirements of Title 42, CFR, Section 438.10(f) and (g), the beneficiary brochure shall advise beneficiaries of the availability on request of a listing of cultural/linguistic services available through the Contractor.
 - 2) In addition to any requirements of Title 42, CFR, Section 438.10(f) and (g), the provider list shall include information on the category or categories of services available from each provider. At a minimum the services available from the

provider shall be categorized as psychiatric inpatient hospital services, targeted case management services and/or all other specialty mental health services. At the election of the Contractor, the list may include instructions to the beneficiary explaining how appointments may be scheduled and information on cultural and/or linguistic services available from the providers.

- b. On a one-time basis, distribute a beneficiary brochure and provider list ~~informing materials developed pursuant to paragraph a.~~ to all beneficiary households and all current clients as an initial distribution ~~when funds are available~~, including provider lists only in the distribution to current clients.
- c. Distribute the most current beneficiary brochure ~~informing materials~~ developed pursuant to paragraph a. to new beneficiaries on an ongoing basis ~~when funds become available~~.
- d. ~~Review informing materials for changes in federal and state laws and rules and for changes to Contractor specific information annually and update and distribute materials as needed.~~
- d. Pursuant to Title 42, CFR, Section 438.10(f)(4), when there is a change in covered services under the contract, develop and distribute an update in the form of a beneficiary brochure insert and distribute to all Medi-Cal households and to the Contractor for inclusion in informing materials provided to new clients at least 30 days prior to the change. The Department shall work with the California Mental Health Directors Association to determine if notices of changes during the year outside the annual update process, in addition to notices related to changes in covered services under the contract, should be provided to beneficiaries.
- e. Provide annual notice to all beneficiaries in accordance with Title 42, CFR, Section 438.10(f)(2).

G. Sanctions

Apply oversight and sanctions in accordance with Title 9, CCR, Sections 1810.380 and 1810.385, to the Contractor for violations of the terms of this contract, and applicable federal and state law and regulations.

H. Notification

Notify beneficiaries of their Medi-Cal specialty mental health benefits and options available upon termination or expiration of this contract.

I. Performance Measurement

Measure the Contractor's performance based on Medi-Cal approved claims and

other data available to the Department using standard measures established by the Department in consultation with the State Quality Improvement Council.

J. Data Certification

Require that the Contractor certify data provided by the Contractor that will be used by the State to determine payment rates to the Contractor in accordance with Title 42, CFR, Section 438.604 and 438.606.

SECTION 7 – SUBCONTRACTS

- A. No subcontract terminates the legal responsibility of the Contractor to the Department to assure that all activities under the contract are carried out.
- B. All subcontracts must be in writing.
- C. All inpatient subcontracts must require that subcontractors maintain necessary licensing and certification.
- D. Each subcontract must contain:
 - a. Full disclosure of the method and amount of compensation or other consideration to be received by the subcontractor from the Contractor.
 - b. Specification of the services to be provided.
 - c. Specification that the subcontract shall be governed by and construed in accordance with all laws, regulations, and contractual obligations of the Contractor under this contract.
 - d. Specification of the term of the subcontract including the beginning and ending dates as well as methods for amendment, termination and, if applicable, extension of the subcontract.
 - e. The nondiscrimination and compliance provisions of this contract as described in Exhibit D, Section 7.
 - f. Subcontractor's agreement to submit reports as required by the Contractor.
 - g. The subcontractor's agreement to make all of its books and records, pertaining to the goods and services furnished under the terms of the subcontract, available for inspection, examination or copying by the Department, DHS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, at all reasonable times at the subcontractor's place of business or at such other mutually agreeable location in

California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five years from the close of the Department's fiscal year in which the subcontract was in effect.

- h. Subcontractor's agreement that assignment or delegation of the subcontract shall be void unless prior written approval is obtained from the Contractor.
- i. Subcontractor's agreement to hold harmless both the State and beneficiaries in the event the Contractor cannot or shall not pay for services performed by the subcontractor pursuant to the subcontract.
- j. If applicable based on the services provided under the subcontract, the subcontractor's agreement to comply with the Contractor's policies and procedures on advance directives pursuant to Exhibit A, Attachment 3, Section A, and the Contractor's obligations for Physician Incentive Plans pursuant to Exhibit A, Attachment 3, Section B.